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FILE COPY

No. 9[redacted]69

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

RECONSTRUCTION FINANCE CORPORATION, PRUDENCE-BONDS CORPORATION, PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, and THE MARINE MIDLAND TRUST COMPANY OF NEW YORK,

Petitioners,

AGAINST

PRUDENCE SECURITIES ADVISORY GROUP, INDEPENDENT PRUDENCE BONDHOLDERS COMMITTEE, *et al.*,

Respondents.

Brief for Respondents Rogers & Whitaker, Latson & Tamblyn, and Grosvenor M. Calkins, in Opposition to Petition for Writ of Certiorari.

ROGERS & WHITAKER,
LATSON & TAMBLYN,
GROSVENOR M. CALKINS,
Pro Se.

ALMET R. LATSON, JR.,
Of Counsel.

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INDEX.

Citations.

Statutes Referred To.

Opinions Below.

The opinions of the Circuit Court of Appeals for the Second Circuit (fols. 955, *et seq.*) are not yet reported.

Blank Page

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The Circuit Court of Appeals dismissed, *of its own motion,* the appeals to that Court from the orders granting allowances to these respondents, and the members of the Committees represented by them (fol. 1010).

The petition is predicated upon four specifications of error. At the outset, one fundamental fact must be emphasized: At no time, either before or after the decision of this Court in *Dickinson Industrial Site, Inc.* v. *Cowan,* No. 386, October, 1939, Term decided March 11, 1940 has *any* paper, which could possibly serve as a request for leave to appeal, been filed in the Circuit Court of Ap-

peals (fol. 971). Whether or not leave to appeal should be granted in the present case, *never* was before the Circuit Court of Appeals, and has never been passed upon by it. There was not before the Circuit Court of Appeals the question whether such leave must be applied for before the expiration of the time to appeal, and the discussion of this question by the Circuit Court, although clearly correct, was pure *dictum*. Therefore, the only question in the present case is whether a Circuit Court of Appeals acquires jurisdiction of an appeal from an order granting allowances in a proceeding governed by Chapter X of the Chandler Act, when *no* application to it for leave to appeal has been made. This was the very question decided by the *Dickinson* case:

> "Our view, however, is that appeals from all orders making or refusing to make allowances of compensation or reimbursement under Chap. X of the Chandler Act may be had only at the discretion of the Circuit Court of Appeals."

This disposes of the first and second specifications of error.

The third specification of error is disposed of by *Alaska Packers* v. *Pillsbury*, 301 U. S. 174. If a Circuit Court of Appeals may not by a *rule* abrogate a Statute, certainly a *decision* by it can have no such effect.

The fourth specification of error is refuted by the opinion of the Circuit Court. *It* did not receive the motion to consolidate the appeals as an application for leave to appeal (fol. 973), and the order was made "without prejudice to a motion to dismiss said appeals" (fol. 756), and the attorney for the appellants never intended to apply for leave to appeal (fols. 906; 933).

As to the reasons propounded for granting the writ:

A conflict between the present case and *Baxter* v. *Savings Bank*, 92 Fed. 2nd 404 and *Wilson* v. *Alliance Life*,

102 Fed. 2nd 365, cannot exist, since neither case involved procedure under the Chandler Act.

There is no basis for the suggestion that the decision appealed from will give rise to confusion—it has merely followed the decision of this Court on a narrow specific question. Other Circuit Courts of Appeal are already following the *Dickinson* case (*In re Donahoe's Inc.*, 110 Fed. 2nd 813), and confusion would arise only if the present petition were granted.

The third reason assigned for granting the writ assumes erroneously that the appellants have tardily applied for leave to appeal, and that such leave was denied, and that such an order denying such application is here for review. Such is not the fact as we have already pointed out.

The fifth reason assigned for granting the writ assumes that because allowances are substantial, they must and should be reviewed. The services rendered were also substantial, and the only question that can be involved is whether there has been an abuse of discretion (*Dickinson Industrial Site, Inc.* v. *Cowan*). With so large a number of bondholders (not one of whom have appealed), "in one of the most extensive mortgage guaranty enterprises in New York" (fol. 979), where the allowances have already been carefully passed upon by a Special Master and a District Judge, this is hardly likely.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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ALMET R. LATSON, JR.,
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